



Division Bench (Criminal)

"Allotted by the High Court Legal Services Committee"

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IN THE HIGH COURT OF JUDICATURE AT JABALPUR (M.P.)

CRIMINAL APPEAL NO. 261 OF 1999

Sitaram, aged about 30 years,
S/o Ramdev Kahar, R/o Vill.
Obara Garhva Bihar, Brahma
Para Ambikapur, Distt. Sarguja.
(M.P.)

**** APPELLANT

(IN JAIL)

V E R S U S

The State of M.P., through
Police Station- Ambikapur,
Distt. Ambikapur (M.P.)

**** RESPONDENT

CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE CODE OF

CRIMINAL PROCEDURE CODE XXXX

आदेश पत्रक

मामला क्रमांक

G. A. 206/99 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>Division Bench: -</u> <u>Hon'ble Mr. L.C. Bhadoo and</u> <u>Hon'ble Mr. Dharendra Mishra, JJ.</u> <u>3-4-2006</u> Miss Sharmila Singhai, counsel for the appellant. Mr. Ravindra Agrawal, Panel Lawyer for the State/respondent. With the consent of respective counsel, the appeal is heard for final disposal. Oral judgment dictated on <i>Dais</i>. <u>Per L.C. Bhadoo, J: -</u> By this appeal under Section 374 (2) of the Code of Criminal Procedure, accused/appellant Sitaram has questioned legality and correctness of the judgment of conviction and order of sentence dated 20th November, 1998, passed by the Sessions Judge, Surguja (Ambikapur), in Sessions Trial No.59/96, whereby learned Sessions Judge after holding the accused/appellant along with one Nirmal @ Niranjan guilty for commission of offence under Section 302 of the Indian Penal Code, sentenced each of the accused to undergo imprisonment for life and pay a fine of Rs.200/-, in default of payment of fine to further undergo imprisonment for four months. However, they were acquitted of charge under Section 201 of the I.P.C. The case of the prosecution, in brief, is that Nitesh Kumar Gupta (PW-8) lodged the First Information Report (Ex.P-10) in Police Station: Ambikapur on 30th November, 1995, to the effect that on that day at about 7 p.m. when he was at his residence, Sitaram & Nirmal Nagesia came to	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	his house from Darripara side, his father was also at residence, they enquired about liquor on which his father replied that liquor is not available at the residence, therefore, they left towards western side of the pond. After some time, he heard the rattling noise of rickshaw which was going towards old brick kiln, that raised doubt in his mind that they might have forgotten the passage, he went to the left side and saw them at some distance that they were lifting the body of a person from the rickshaw, took the body towards the pit of brick kiln and they started talking that whether they should leave the body there or some where else. On seeing this, he came back to his house and informed his father and persons of the vicinity about the incident on which all the persons went towards that side and saw that the body of a person was lying and Nirmal & Sitaram were sitting there. The body was naked and there were bloodstains on the face of the body. Receiving this report, the Station House Officer, Police Station: Ambikapur, registered the F.I.R. (Ex.P-10), left for the scene of occurrence and took into possession blood stained soil, plain soil, one nylon socks and one handkerchief from the place of occurrence under Ex.P-14. He also took into possession from Sitaram, one yellow colour sweater, one underwear, one full pant of Leo make and one Baniyan under Ex.P-15. Panchnama of the dead body Ex.P-8 was prepared after giving notice Ex.P-7 to the Panchas. One sweater was taken into possession from Nirmal under Ex.P-6. The dead body was sent for post-mortem examination to the District Hospital, Ambikapur, under Ex.P-12, where Dr. B.S. Sengar (PW-3) conducted post-mortem and prepared the post-mortem report (Ex.P-3).	

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	After completion of investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Ambikapur, who in turn committed the case to the Sessions Judge, Ambikapur, for trial. The prosecution in order to establish charge against the accused persons examined ten witnesses. On the other hand, statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the prosecution evidence and stated that they have been falsely implicated in the crime. Learned Sessions Judge after hearing the arguments of respective counsel convicted and sentenced the appellant and the co-accused as mentioned in para 1 of this judgment. We have heard Miss Sharmila Singhai, learned counsel for the appellant and Mr. Ravindra Agrawal, learned Panel Lawyer on behalf of the State/respondent. The homicidal death of Shivrath Upadhyay is not in dispute. As far as involvement of the accused/appellant along with co-accused in the crime in question is concerned, the main witness in this was the informant Nitesh Kumar Gupta (PW-8) who has turned hostile. He has not supported the prosecution case. He has stated in his evidence that at about 8 p.m. he was at his residence, there is a pit in the brick kiln near his house, he saw there two persons who were dropping something from their hands and thereafter, he informed his neighbours and all of them saw that these two persons were there. Thereafter, he was asked to go to the Police Station. He has further stated in his evidence that he had	-3-

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 4 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	not seen the accused persons at the place of occurrence. Even after declaring hostile on cross-examination by the Public Prosecutor, this witness has not supported even the first information report lodged by him. Other witness namely, Heera Singh (PW-1) has also turned hostile and stated that he had not seen the accused persons at the place of occurrence. Vijay Prasad Gupta (PW-4) has stated in his evidence that two persons were standing near the pit and today he is not able to identify whether the accused persons were standing there or not. This witness has also been declared hostile. Similarly, Hansuram (PW-5) has also been declared hostile and he has stated in his evidence that he had not seen the accused persons at the place of occurrence. Similarly, Kanhaiya (PW-6) has also been declared hostile and not supported the prosecution case. Therefore, there is no witness to the incident. N.P. Upadhyay (PW-9), the Investigating Officer, has stated in his evidence that on 30th November, 1995, at about 22.15 hours, Nitesh Kumar Gupta (PW-8) lodged the first information report (Ex.P-10), therefore, he left for the place of occurrence on 1-12-1995 and after reaching the place of occurrence, he prepared the Panchanama (Ex.P-8) after giving notice Ex.P-7 to the Panchas. The dead body was sent for post-mortem examination. When he reached the place of occurrence in the night he saw that accused Nirmal & Sitaram were also sitting there along with other persons. One full sleeves sweater of black colour was taken into possession from accused Nirmal under Ex.P-5. Even the rickshaw was not taken into possession and the sweater which was said to have been recovered from Nirmal has not been identified by anybody to the effect that same belongs	

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	to the deceased. Khemraj Singh (PW-10), the Police Constable, has stated in his evidence that he was sent on duty on receiving the report, but he does not remember whether the vicinity people have detained two rickshaw-walas at the place of occurrence or not. In para 5 he has stated that both the accused persons were sitting along with other persons at the place of occurrence. The prosecution has not been able to bring on record any material to show that in any way, the accused persons carried the body of deceased Shivnath Upadhyay in the rickshaw in question or anybody saw them lifting the body from rickshaw and place the same in the pit near the brick kiln. Even the sweater, which was recovered from accused Nirmal, has not been identified by anybody that same was belonging to the deceased. Therefore, virtually there is no evidence in this case to connect accused/appellant Sitaram and co-accused Nirmal with the crime in question. In the circumstances, finding of the trial Court convicting the accused/appellant cannot be sustained. As in this case, the prosecution has not been able to produce any evidence to connect the accused/appellant along with co-accused Nirmal with the crime in question, i.e. murder of Shivnath Upadhyay, therefore, we allow the appeal of Sitaram. The judgment of the trial Court convicting and sentencing the accused/appellant under Section 302 of the I.P.C. is set aside. He is acquitted of charge under Section 302 of the I.P.C. He be set at liberty forthwith, if not required in any other case. Parties are entitled for certified copy of this order.	
	Sd/- L.C.BHADOO Judge	Sd/- DHIRENDRA MISHRA Judge [पीछे देखिये]

19/4/06